

November 27, 2006

Civil Division-Kent County (739-7641)

Mr. Richard E. Maly
P.O. Box 366
Camden, DE 19934-0366

Re: **Freedom of Information Act Complaint Against
Camden-Wyoming Sewer & Water Authority**

Dear Mr. Maly:

On November 3, 2006, our Office received your complaint under the Freedom of Information Act, 29 *Del. C.* Ch. 100 ("FOIA"), against the Camden-Wyoming Sewer & Water Authority ("the Authority") alleging that the Authority violated the public record requirements of FOIA.

You provided us with the caption and last page of a complaint filed in the Court of Chancery by the Authority against the Town of Camden, C.A. No. 1283-K. In the prayer for relief, the complaint asks the court to "[a]ward the [Authority] the costs and expenses incurred in this action."

By letter dated October 2, 2006, you asked the Authority for the "total amount of monies expended in the research, filing and pursuit of this litigation." By letter dated October 6, 2006, the Authority informed you "that your request has been forwarded to the Attorney for a response to your request."

By letter dated October 27, 2006, the Authority's attorney, Mary E. Sherlock, Esquire, responded to your FOIA request.

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I did not separately bill the Authority for my time spent on the Chancery Court lawsuit. In other words, I sent bills for legal services rendered to the Authority, on a quarterly basis, that would have included my work in regard to this lawsuit but it was not segregated out by myself or the Authority.

It is my understanding that the Authority is not required to generate new documents to comply with a FOIA request which is what your request would necessitate.

By letter dated November 3, 2006, our Office asked the Authority to respond to your FOIA complaint by November 14, 2006. We received the Authority's response on November 13, 2006.

According to the Authority's attorney, "[t]he Chancery suit was filed on April 21, 2005 and settled on August 30, 2006 pursuant to the enclosed Stipulated Settlement Agreement and Order. . . Pursuant to the enclosed Stipulated Settlement Agreement and Order: (1) all parties agreed to bear their own legal fees, costs, expenses and not to seek any such costs or expenses from the other party." The Authority's attorney reiterated that she "did not separately bill the Authority for my time expended on this Chancery lawsuit. My time expended on the lawsuit would have been included with a variety of other legal matters included in my quarterly billing to the Authority."

RELEVANT STATUTES

FOIA requires that "[a]ll public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body." 29 *Del. C.* §10003(a).

LEGAL ANALYSIS

Our Office has previously determined that "'FOIA does not require a public body to produce records that do not exist.'" *Att'y Gen. Op.* 05-IB19 (Aug. 1, 2005) (quoting *Att'y Gen. Op.* 96-IB28 (Aug. 28, 1996)). For example, "FOIA 'does not require a public body to prepare an accounting 'pulling together information from various sources and arranging it in a [requested] format . . . to create a new public record that did not previously exist.'" *Att'y Gen. Op.* 05-IB08 (Apr. 4, 2005) (quoting *Att'y Gen. Op.* 03-IB24 (Oct. 30, 2003) (quoting *Att'y Gen. Op.* 03-IB13 (June 2, 2003))).

In *Att'y Gen. Op.* 05-IB08, our Office determined that the school district satisfied the requirements of FOIA by making available all documents relating to how it allocated special education monies. "FOIA does not dictate the format in which the School District accounts for its money, nor does FOIA require the School District to perform an accounting for you to respond to your FOIA request."

In *Att'y Gen. Op.* 03-IB13 (June 2, 2003), the county received a FOIA request for an accounting of monies transferred from an executive contingency fund to pay outside legal counsel. Our Office determined that the county did not have to prepare an accounting of those monies "pulling together information from various sources and arranging it in the format requested to create a new public record that did not already exist. The underlying documents on which such an accounting might be prepared, however, are subject to FOIA, . . . If the County has documents which reflect when the monies were spent, for what purpose, and who received payments in what amount, then those documents are public records under FOIA. The right of citizens to know how their

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government spends public funds is among the core purposes of the public information laws."

We accept the representation of the Authority's attorney that her legal bills to the Authority did not segregate the time she spent on the Chancery Court litigation. FOIA does not require the Authority to break out that information from its quarterly legal bills. However, we believe that FOIA entitles you to inspect the Authority's legal bills for every quarter during which the Chancery Court litigation was pending.

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CONCLUSION

For the foregoing reasons, we determine that the Authority did not violate the public records requirements of FOIA because the Authority does not have in its custody an accounting of the costs of legal counsel in the Chancery Court litigation, and FOIA does not require the Authority to prepare such an accounting.

Very truly yours,

W. Michael Tupman
Deputy Attorney General

APPROVED

Lawrence W. Lewis, Esquire
State Solicitor

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cc: The Honorable Carl C. Danberg
Attorney General

Malcolm S. Cobin, Esquire
Chief Deputy Attorney General

Keith R. Brady, Esquire
Assistant State Solicitor

Mary E. Sherlock, Esquire

Phillip G. Johnson
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